

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3103
Administrative Law Judge Division
December 17, 2002

R E S O L U T I O N

RESOLUTION ALJ 176-3103. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hkr

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on December 17, 2002, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3103 (12/17/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-11-017 PACIFIC GAS AND ELECTRIC COMPANY, for authority, among other things, to increase revenue requirements for electric and gas service and to increase rates and charges for gas service effective January 1, 2003.	Ratesetting	Ratesetting	YES
A02-11-054 GREAT AMERICA NETWORKS, INC., for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Local Exchange Telecommunications Services within California.	Ratesetting	Ratesetting	NO
A02-11-055 PACIFIC PIPELINE SYSTEM LLC, for authorization pursuant to Public Utilities Code Section 851 to lease pipeline facilities to Shell Oil Products U.S.	Ratesetting	Ratesetting	NO
A02-11-056 IP COMMUNICATIONS CORPORATION, dba CALIFORNIA IP COMMUNICATIONS CORPORATION, to relinquish its Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resold Competitive Local Exchange and Interexchange Services.	Ratesetting	Ratesetting	NO
A02-12-001 SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY, in cooperation with the City of Los Angeles to construct a permanent at-grade pedestrian crossing at the Sun Valley Metrolink Station located on the Valley Subdivision at railroad mile post 15.50 in the City and County of Los Angeles, California.	Ratesetting	Ratesetting	NO
A02-12-002 ASIA TALK TELECOM, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A02-12-003 LOCAL GATEWAY EXCHANGE, INC., TELEPHONE SERVICE INCORPORATED, dba FRIENDLYLEC, for an Order Approving Sale of Licenses and Bill of Sale and to Transfer the Certificate of Local Gateway Exchange, Inc. to Telephone Service Incorporated dba Friendlylec.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3103 (12/17/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-12-006 AIRESRING, INC., for a certificate of public convenience and necessity to provide resale and limited facilities-based competitive local exchange services throughout the service territories of Pacific Bell Telephone Company and Verizon California Inc.	Ratesetting	Ratesetting	NO
A02-12-007 SIERRA PACIFIC POWER COMPANY, for an order authorizing the sale of four hydroelectric generation plants on the Truckee River to the Truckee Meadows Water Authority.	Ratesetting	Ratesetting	NO
A02-12-008 TAHA, MOHMED/ELBA, HOHAMED/HASSAN, MAMDOUH, dba ALL COUNTIES AIRPORTER, for authority to operate as a Passenger Stage Corporation between points in San Francisco, Alameda, Contra Costa, Santa Clara and Marin Counties, and the San Francisco, Oakland and San Jose International Airports; and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO
A02-12-009 SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY, in cooperation with the City of Claremont to construct a permanent at-grade pedestrian crossing at the Claremont Metrolink Station located on the San Gabriel Subdivision at railroad mile post 33.05 in the City of Claremont, County of Los Angeles, California.	Ratesetting	Ratesetting	NO
A02-12-011 FRANCE TELECOM CORPORATE SOLUTIONS L.L.C., for a Certificate of Public Convenience and Necessity to Provide Resold Competitive Local Exchange Services within the State of California.	Ratesetting	Ratesetting	NO
A02-12-012 FRANCE TELECOM CORPORATE SOLUTIONS L.L.C., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3103 (12/17/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-12-013 LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, for an Order authorizing the construction of a two-track at-grade crossing for the Eastside Corridor Light Rail Transit Line across Temple Street and across Hewitt Street and the construction of a single track at grade crossing at two pedestrian walkways at the east side of the proposed Alameda Station in the City and County of Los Angeles.	Ratesetting	Ratesetting	NO
A02-12-014 EASTON TELECOM SERVICES, L.L.C., for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resold Local Exchange Services in the State of California.	Ratesetting	Ratesetting	NO
A02-12-015 GURMAIL SINGH, dba SUNLIGHT AIRPORT SHUTTLE, for authority to operate as a Passenger Stage Corporation between points in the Counties of San Francisco, Santa Clara, Alameda Contra Costa and San Mateo, and the San Francisco, Oakland and San Jose International Airports; and to Establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO
A02-12-016 ENHANCED COMMUNICATIONS GROUP, L.L.C., for a Certificate of Public Convenience and Necessity to provide resold and limited facilities-based competitive local exchange services throughout the service territories of Pacific Bell Telephone Company and Verizon California, Inc.	Ratesetting	Ratesetting	NO
A02-12-017 CAT COMMUNICATIONS INTERNATIONAL, INC., for a Certificate of Public Convenience and Necessity to offer limited facilities-based local exchange services via unbundled network elements through existing facilities.	Ratesetting	Ratesetting	NO
A02-12-018 KMEL S. BASHIR, MAGEI M. OSMAN, MAHMOUD MOHAMED, for authority to control California Airporter, Inc. pursuant to Section 854, California Public Utilities Code.	Ratesetting	Ratesetting	NO